THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 556/09

In the matter between:

MINISTER OF SAFETY AND SECURITY	**First Appellant**
THE COMMISSIONER: SOUTH AFRICAN REVENUE SERVICE	**Second Appellant**

and

GARY WALTER VAN DER MERWE	**First Respondent**
MONIQUE VAN DER MERWE	**Second Respondent**
FERN CAMERON (formerly VAN DER MERWE)	**Third Respondent**
ALAN RAYMOND FANAROFF	**Fourth Respondent**
TANTCO GLOBAL (PTY) LTD	**Fifth Respondent**
EXECUTIVE HELICOPTERS (PTY) LTD	**Sixth Respondent**
EXEL AVIATION (PTY) LTD formerly AIFRACT SUPPORT (PTY) LTD	**Seventh Respondent**
MADIBA AIR AND SEA (PTY) LTD	**Eighth Respondent**
HELICOPTER AND MARINE SERVICES (PTY) LTD	**Ninth Respondent**
ZONNEKUS MANSIONS (PTY) LTD	**Tenth Respondent**
SUMMER DAZE TRADING 712 (PTY) LTD	**Eleventh Respondent**
WESTSIDE TRADING (PTY) LTD	**Twelfth Respondent**
SA BARTER (PTY) LTD	**Thirteenth Respondent**
TWO OCEANS AVIATION (PTY) LTD	**Fourteenth Respondent**
HELIBASE (PTY) LTD	**Fifteenth Respondent**

Neutral citation:	*Minister of Safety and Security v Van der Merwe* (556/09) [2010] ZASCA 101 (7 SEPTEMBER 2010)
Coram:	HARMS DP, NUGENT, SHONGWE and TSHIQI JJA and BERTELSMANN AJA
Heard:	**20 AUGUST 2010**
Delivered:	**7 SEPTEMBER 2010**
Summary:	Warrant for search and seizure issued under Criminal Procedure Act – must specify offence under investigation –

whether terms of warrant overbroad.

ORDER

On appeal from: Western Cape High Court (Cape Town) (Davis and Saldanha JJ sitting as court of first instance):

The appeal is dismissed with costs that include the costs of two counsel. The cross appeal is dismissed with costs that include the costs of two counsel.

JUDGMENT

NUGENT JA (HARMS DP, SHONGWE and TSHIQI JJA and BERTELSMANN AJA concurring)

[1] This case concerns four search and seizure warrants that were issued by magistrates under the authority of s 21 of the Criminal Procedure Act 51 of 1977. The warrants were issued at the instance of the police upon information provided by the South African Revenue Service (SARS). Three of the warrants – I will call them the Cape Town warrants – were issued simultaneously and authorised the search for and seizure of documents from various premises in Cape Town. The other warrant – which I will call the Bellville warrant – was issued by a different magistrate and granted similar authority in relation to premises in Bellville.

[2] All the respondents – and in particular Mr van der Merwe, the first respondent – have an interest in one or more of the warrants. They applied to the High Court at Cape Town for orders, amongst others, setting aside the warrants, and directing the return of the seized items. The court (Davis and Saldanha JJ) set aside the Cape Town warrants. A counter application for a preservation order of the kind that was sanctioned by the Constitutional Court in *Thint (Pty) Ltd v National Director of Public Prosecutions; Zuma v National Director of Public Prosecutions*[1] was postponed for later hearing and was duly granted. That order is not under appeal before us. The application to set aside the Bellville warrant was dismissed. With the leave of the court below the Minister of Safety and Security and the Commissioner of SARS now appeal against the orders relating to the Cape Town warrants, and the respondents cross-appeal against the order relating to the Bellville warrant. Both are before us with the leave of the court below.[2]

[3] For some years the financial affairs of Mr van der Merwe were under investigation by the Criminal Investigations Unit of SARS. In about December 2007 the investigation was placed in the hands of Superintendent Kotze of the Commercial Branch of the South African Police Services. She applied to magistrates at Cape Town and Bellville respectively for the issue of the warrants that are now in issue. The applications were supported by an affidavit deposed to by Superintendent Kotze in which she said that there was reason to believe that fraud and contraventions of the Value-Added Tax Act 89 of 1991, the Income Tax Act 58 of 1962 and the Prevention of Organised Crime Act 121 of 1998 had been committed by one or some of the respondents. (The alleged

1 2009 (1) SA 1 (CC) paras 222-224.
2 The judgment of the court below is reported as *Van der Merwe v Additional Magistrate, Cape Town* 2010 (1) SACR 470 (C).

participation of various of the respondents in the offences was set out in the affidavits but I need not deal with those details.) She set out in considerable detail the nature of the suspected offences in each case, supported by appended documentation. On the strength of that information the various warrants were issued.

[4] The three Cape Town warrants relate to separate premises described as Zonnekus Mansions, Helibase and Royal Ascot respectively. But for that distinction they are in substantially the same form. The warrants were in a standard form with appropriate additions. In each case the warrant was addressed to 'the persons as listed in "Annexure A" hereto'. They recorded that it appeared to the magistrate from information under oath that there were reasonable grounds to believe, amongst other things, that the articles listed in Annexure B to the warrant were connected to the commission of an offence,[3] and that they were at or on the premises mentioned. The warrants went on to authorise such persons to enter and search the relevant premises and any person found on the premises and 'to seize the articles as described in Annexure B hereto if found'. They also provided in Annexure C for the search, seizure and copying of computer related matter. The warrants concluded by directing the searchers to 'deal with [the seized articles] according to law / bring [the seized articles] before me to be dealt with according to law'. Annexure A contained the names of 36 police officers and nine officials of SARS. Annexure B contained an extensive list of documentation classified in 18 paragraphs.

3 More comprehensively the warrant recorded, by the marking of applicable standard-form blocks, that there were reasonable grounds to believe that the article concerned '(a) is concerned in the commission of an offence (b) is concerned in the suspected commission of an offence (c) is on reasonable grounds believed to be concerned in the commission of an offence (d) is on reasonable grounds believed to be concerned in the suspected commission of an offence (e) may afford evidence of the commission of an offence (f) may afford evidence of the suspected commission of an offence (g) is intended to be used in the commission of an offence (h) is on reasonable grounds believed to be intended to used in the commission of an offence.'

[5] The Bellville warrant was in substantially the same form but with one important distinction. While the Bellville warrant contained the same introductory narration in that case the offences concerned were described in considerable detail in an annexure to the warrant.

[6] In the founding affidavit deposed to by Mr Van der Merwe the validity of the warrants, and the lawfulness of the execution of the Cape Town warrants, was sought to be attacked on numerous grounds. It is not necessary to deal with the allegations relating to the execution of the Cape Town warrants for reasons that will become apparent. I also need not deal with all the grounds upon which the validity of the warrants was initially sought to be impugned because they have narrowed.

[7] I think it is useful briefly to restate some broad principles relating to warrants for search and seizure before turning to the particular issues that arise in this case.

[8] We are not concerned in this case – nor has that been the concern in other cases to which I refer – with powers of search and seizure that might have existed at common law but instead with powers created by statute. From the earliest criminal codes – both in this country and abroad – statutory powers of search and seizure have existed for the detection and prosecution of crime. Such powers to search and seize in relation to crime are generally authorised in the following way.

[9] A court or judicial officer is empowered by the statute to authorise, first, a search of premises, and secondly, the seizure of articles found in the course of that search, by issuing a warrant to that effect. Most often

the power to issue such a warrant is dependent upon it being shown by information on oath that it is suspected on reasonable grounds that an article (or articles) connected with a suspected offence is to be found on premises.[4]

[10] For a warrant to be justified in such circumstances the information that is placed before the court or judicial officer will necessarily need to demonstrate, first, that there are reasonable grounds to believe that a crime has been committed, and secondly, that there are reasonable grounds to believe that an article connected with the suspected crime is to be found upon particular premises. In order to demonstrate the existence of those jurisdictional facts the 'information on oath' will necessarily need to disclose the nature of the offence that is suspected.

[11] In some cases it will be known that a particular article exists that is connected with the suspected crime. In those cases the purpose of the search will be to discover the particular article, and the article will thus be capable of being described in specific terms. In other cases it will not be known whether any particular article exists but it can be expected that an article or articles of a particular kind will exist if the offence was committed. In such cases the purpose of the search will be to discover whether such article or articles exist, and thus it or they will be capable of being described only by reference to their genus. It is in relation to warrants of that kind that problems of validity most often arise. It will be inherent in the nature of the authority to search that the searcher might in appropriate circumstances be entitled to examine property that is not itself connected with the crime – for example, the contents of a cupboard or a

4 The jurisdictional fact or facts that are necessary for the issue of a warrant obviously vary from statute to statute but for convenience I confine myself to only one of the jurisdictional facts that is usually to be found in such statutes.

drawer, or a collection of documents – to ascertain whether it contains or is the article that is being sought.

[12] The authority that is conferred by a warrant to conduct a search and then to seize what is found makes material inroads upon rights that have always been protected at common law – amongst which are rights to privacy and property and personal integrity. In those circumstances – as demonstrated by the review of decided cases by Cameron JA in *Powell NO v Van der Merwe NO*[5]– the courts in this country have always construed statutes that authorise the issue of warrants strictly in favour of the minimum invasion of such rights – which is in accordance with a general principle of our law to that effect. As the learned judge said in that case:[6]

'Our law has a long history of scrutinising search warrants with rigour and exactitude – indeed, with sometimes technical rigour and exactitude. The common law rights so protected are now enshrined, subject to reasonable limitation, in s 14 of the Constitution:

"Everyone has the right to privacy, which includes the right not to have –

(a) their person or their home searched;

(b) their property searched';

(c) their possessions seized; or

(d) the privacy of their communications infringed." '

[13] A challenge to the validity of a warrant will thus call for scrutiny of the information that was before the issuing officer to determine, firstly, whether it sufficiently disclosed a reasonable suspicion that an offence had been committed, and secondly, whether it authorises no more than is strictly permitted by the statute.

[14] Questions that arise in relation to the second issue will generally

5 2005 (5) SA 62 (SCA).
6 Para 50.

fall into either of two different categories. The first is whether the warrant is sufficiently clear as to the acts that it permits. For where the warrant is vague it follows that it will not be possible to demonstrate that it goes no further than is permitted by the statute. If a warrant is clear in its terms a second, and different, question might arise, which is whether the acts that it permits go beyond what is permitted by the statute. If it does then the warrant is often said to be 'overbroad' and will be invalid so far as it purports to authorise acts in excess of what the statute permits. A warrant that is overbroad might, depending upon the extent of its invalidity, be set aside in whole, or the bad might be severed from the good.

[15] Needless to say, a warrant may be executed only in its terms. But it is important to bear in mind that it is not open to a person affected by a search to resort to self-help to prevent the execution of a warrant, even if he or she believes that its terms are being exceeded – which is in accordance with ordinary principles of law. As Langa CJ pointed out in *Thint:*[7]

'While a searched person may in certain cases collaborate and aid the investigator . . . the legislation[8] envisages a unilateral exercise of power that is not dependent on such collaboration.'

Thus it is ultimately the searcher who must decide whether an article or article falls within the terms of the warrant, though he or she does so at the risk that if it does not, his or her conduct might be found to have been unlawful.

[16] I do not think the broad principles that I have outlined are controversial. On the contrary they seem to me to all be in accordance

7 Para 143.
8 In that case the National Prosecuting Authority Act 32 of 1998, but other legislation is usually to the same effect.

with what was said in *Thint*. It is with those broad principles in mind that I turn to the warrants that were issued in this case.

The Cape Town Warrants

[17] The court below held that it is an essential prerequisite for the validity of a warrant issued under s 21 of the Criminal Procedure Act that it specifies the offence or offences in relation to which it has been issued. The Cape Town warrants did not so specify the offence or offences and on that ground they were set aside.

[18] The question whether a warrant was invalid for that reason alone arose in *Pullen NO, Bartman NO & Orr NO v Waja*[9] and the majority held that it was not. In that case a warrant, addressed to 'all police officers', was issued under s 49 of the Criminal Procedure Act 31 of 1917. The body of the warrant was in the following terms:

'WHEREAS it appears to me from information taken on oath that certain books and documents and other papers the property of A.E. Waja and/or M.A. Waja & Co. are concealed in the house or premises situate at erf No. 1055 Rustenburg in occupation of M.A. Waja & Co.

THESE are therefore in His Majesty's name, to authorise and require you, with the necessary and proper assistance, to enter the said house or premises in the day time and there diligently to search for the said books, documents and papers, and if the same, or any part thereof, shall be found upon such search that you bring the books, documents and papers found before the magistrate of Rustenburg to be disposed of and dealt with according to law.'

[19] The warrant was set aside. The grounds upon which the majority did so were stated by Tindall J at 851 (with whom Gey van Pittius J concurred in a separate judgment) as follows:[10]

9 1929 TPD 838.
10 At 851.

'This warrant does not in any way identify the articles to be seized. It so happens that Orr accompanied Bartman and assisted the latter in securing the books required. But in themselves the words "certain books and documents and other papers of A.E. Waja and/or M.A. Waja & Co" are quite general and do not identify the things to be seized; the words are so vague that it is impossible to say what they include. It was argued by Mr *Pirow* that Waja must have understood what books were wanted and the nature of the offence in connection with which their seizure was authorised. But that is by no means clear, and even if he had an inkling on these points, this cannot cure the defect in the warrant itself.'

It seems that the majority might have held the warrant to be valid if it had limited the articles to be searched for and seized by relating them to a specified offence because in an earlier passage the learned judge said the following:[11]

'I think a search-warrant is valid if it either describes the specific thing or things to be searched for or identifies them, as in [*Seccombe v Attorney-General*[12]], by reference to the offence.'

[20] De Waal JP agreed with the order to be made but for a different reason. He concluded that it was necessary in all cases for a warrant to specify the offence that is under investigation. He provided no rationale for why that should be so but relied instead upon what had been said in

11 At 850.
12 1919 TPD 270.

Hertzfelder v Attorney-General,[13] of which he said the following:[14]

'*Hertzfelder's* case . . . is strong authority for the contention of the respondent that the warrant was an illegal document. In that case the Court seems to have taken it as established law that where the warrant for the search of anything does not specify an offence alleged to have been committed in relation to that thing the warrant was bad, and therefore liable to be set aside.'

[21] The contention that the failure to specify the offence, by itself, was fatal to the validity of a warrant was dealt with by Tindall J as follows:[15]

'It seems to me highly desirable that a search-warrant ought to mention the alleged offence, and if I could find a satisfactory reason for holding that this Court has the power to lay down that mention of the offence is essential to the validity of a search warrant I should willingly lay down such a rule. It is desirable that the person whose premises are being invaded should know the reason why; the arrangements in favour of the desirability of such a practice are obvious. But in my opinion there is nothing in sec. 49 which justifies the Court in laying down such a rule. The use of the words "any such thing" in the sentence in the section which speaks of the warrant as a "warrant directing a policeman to search such premises and seize any such thing" cannot be construed to indicate anything more than that the warrant must identify the things to be seized. The section does not indicate in any way that the articles must be identified by reference to the offence. There may be cases where the prosecution cannot identify the articles except by reference to the offence as, for example, in [*Seccombe v Attorney-General*][16]. In such cases it is sufficient to identify the articles by reference to the offence, as was done in the warrant in *Seccombe's* case. But where a specific thing is mentioned in the warrant, as, for instance, a bicycle with a specified number in the example above quoted, I fail to see on what ground this Court has jurisdiction to say the warrant is bad. The Legislature might have prescribed the form of warrant in the statute as was done in the New Zealand Act, but it preferred to leave the matter to be settled by rule of court. No rule of court having been framed I am at a loss to see on what ground this Court can say that a search-warrant is bad merely because it fails to mention the alleged offence. It will be observed that in regard to

13 1907 TS 403.
14 At 863.
15 At 849-850.
16 1919 TPD 270.

warrants of arrest the Act of 1917 alters Ordinance 1 of 1903 in important respects; the Act provides specifically that a warrant of arrest must mention the offence and gives the person arrested the right to demand to see the warrant and read it. The silence of the Act as to the contents of a search warrant is explained by the fact that the Legislature left the matter to be regulated by rule of court.

I have come to the conclusion, therefore, that the absence of mention of the offence in the warrant is not fatal to its validity; I think a search-warrant is valid if it either describes the specific thing or things to be searched for or identifies them, as in *Seccombe's* case, by reference to the offence. Further than that I do not think the Court would be justified in going.'

[22] The court below made the following observations relating to that passage:[17]

'In our view, the majority judgment in Pullen hardly represents as convincing an assertion of the common law position as contended for by respondents. Significantly, there was a minority judgment by De Waal JP which referred to an earlier decision of Innes CJ in Hertzfelder v Attorney General 1907 TS 403 in which the court had held that a warrant was bad if it had not specified the crime alleged to have been committed by the applicant. Hertzfelder *supra* at 405. Whereas Tindall J had accepted that his approach contradicted that of Innes CJ (at 850), he justified this difference by stating:

> *"In that case, however counsel for the respondent admitted that the warrant was invalid and the question was not argued."*

This conclusion cannot be sustained after a careful reading of the judgment in Hertzfelder, a point made clearly by De Waal JP in his minority judgment. As De Waal JP said at 864 about the relevant legislation:

> *"If the legislature had intended that upon the passing of the 1917 Act the rule as laid down in Hertzfelder's case that a search warrant was bad which had not specified a crime alleged to have been committed, was no longer to be observed, it would have manifested that intention expressly and in clear language."*

Viewed accordingly therefore, the precedent invoked by Mr Le Grange by way of the

17 Para 40.

majority judgment of Tindall J in Pullen was predicated on a very weak jurisprudential foundation.'

[23] Some care must be taken when construing what was said in *Hertzfelder* because I do not think it supports the observations of the court below. Tindall J was indeed correct when he said that the point had not been argued: the report says as much. It records the following statement made by counsel for the respondent: 'I admit that the warrant was not proper under sec. 45 [of the Criminal Code – Ordinance 1 of 1903].'

[24] Moreover, it seems to me that De Waal JP might possibly have misunderstood what was in issue in *Hertzfelder*. That case concerned a warrant to search a room in the Carlton Hotel. The search revealed a leather trunk containing papers and it was seized. In finding the warrant to be invalid Innes CJ (Smith and Curlewis JJ concurring) said the following, after remarking that the warrant was 'most irregular in form':[18]

'It does not specify the crime alleged to have been committed, and it is in fact quite unintelligible. It is on a printed form dealing with stolen property, and authorizing the proper officer to search premises and seize such property. But all the words relating to stolen property have been struck out, and the warrant, as it stands, does not disclose that any crime has been committed, and is, as I have said, quite unintelligible and informal.'

[25] De Waal JP seems to have understood the warrant to have authorised, in terms, a search for the leather trunk specifically.[19] It is not apparent from the judgment in *Hertzfelder* that that was so – its terms do not appear from the judgment. But it is most unlikely that a warrant that

18 At 405.
19 At 863: '[I]n that case . . . a definite article was ordered to be seized, whereas in the case before us . . . the search was [not] directed to a specified article in the possession of the respondent'.

authorised a search for and seizure of, specifically a leather trunk, would have been described by Innes CJ as 'quite unintelligible'. It seems more likely that the warrant purported to authorise a general search of some kind – much as the warrant did in *Pullen* – and if that was the case it is understandable that the court would have regarded the warrant to be 'unintelligible' in the absence of a reference to a specified offence (just as Tindall J did in *Pullen*). Thus I think it is far from clear that the failure to specify an offence, by itself, was considered by Innes CJ to be fatal to the validity of the warrant, as asserted by De Waal JP, notwithstanding that Tindall J himself understood the decision in that way.

[26] The court below also found support for its view in the decision in *Powell*. That case concerned a warrant that was issued under s 29 of the National Prosecuting Act. The warrant did not specify the offence that was under investigation. It seems not even to have been argued that it was invalid for that reason alone nor was it set aside on that ground. The references by Cameron JA to the absence of a specified offence were made in the context of whether the warrant was over broad – which was the ground upon which the warrant was set aside, as it was in *Pullen*.

[27] Both the court below and counsel for the respondents were on firmer ground, however, when they relied on the decision in *Thint*. That case, as with *Powell*, concerned a warrant that had been issued under s 29 of the National Prosecuting Act 32 of 1998. On that occasion the warrant did specify the offences that were under investigation. What was contentious in that regard was only whether the offences had been adequately described.[20]

20 See para 170.

[28] Although the question that now confronts us was not strictly before the court for decision it nonetheless laid down deliberately the criteria for the validity of a warrant issued under that section. Langa CJ expressed them as follows:[21]

'A s 29 warrant should state at least the following, in a manner that is reasonably intelligible without recourse to external sources of information: the statutory provision in terms whereof it is issued; to whom it is addressed; the powers it confers upon the addressee; the suspected offences that are under investigation; the premises to be searched; and the classes of items that are reasonably suspected to be on or in that premises. It may therefore be said that the warrant should itself define the scope of the investigation and authorised search in a reasonably intelligible manner.'

[29] Counsel for the appellant reminded us, correctly, that the validity of a warrant will depend upon the provisions of the particular authorising statute, and that *Thint* laid down those requirements only in relation to the statute that was there in issue. He sought to persuade us that there is a material distinction between that statute and the Criminal Procedure Act that makes that requirement inapplicable in this case. He pointed out that the National Prosecuting Authority Act was designed for the investigation and prosecution of only a limited class of offences. In those circumstances, so the submission went, the warrant must specify the offence so as to demonstrate to the searched person that the investigative capacity of the searcher is not being exceeded.

[30] Although the argument is persuasive that was not the basis upon which the requirement was laid down in *Thint*. And while it is correct that the validity of a warrant must be tested against the particular statute under which it is issued there are nonetheless some criteria that are universal by the very nature of a warrant. One is that the warrant must be intelligible –

21 Para 159.

I understand the term to be used in *Powell and Thint* to describe collectively the two requirements of a warrant that I referred to earlier, namely, that its terms must be neither vague nor overbroad – and it was in that context that the rule was laid down in *Thint*. That is apparent from the passage I have cited and from other passages in the judgment.

[31] One might question why a warrant is necessarily not intelligible in that sense if it fails to specify the offence. There will indeed be cases – *Pullen* was such a case – in which the terms of the warrant will not be capable of being understood, or will be too broad, if the offence is not specified, but that is a matter for construction of the particular warrant. But where a warrant authorises a search for and seizure of a definite item – an example is a specified letter: the example given in *Pullen* was a specific bicycle – then both the meaning and the scope of the warrant are precisely defined, notwithstanding that the suspected offence is not stated. Indeed, the warrant in this case further illustrates the point. Amongst the documents listed in Annexure B are, for example, 'notule van vergaderings . . . ten opsigte van . . . Eagles Trust wat betrekking het op die transaksies of onderhandelinge wat verband hou met die MV Madiba.' On the face of it there ought to be no difficulty identifying those documents with relative certainty, and determining whether they fall within the scope of the statute, even though the offence is not specified (whether the offensive parts are capable of being severed from those parts is a separate question) and many similar examples appear throughout the warrant.

[32] But that notwithstanding, the requirement that the offence must be specified was laid down unequivocally and without qualification in *Thint* in the context of the intelligibility of the warrant, and in that respect I see

no material distinction between a warrant that is issued under that statute and a warrant that is issued under the Criminal Procedure Act.

[33] A court is bound to follow the decisions of a more authoritative court, and for good reason, as pointed out by Cameron JA in *True Motives 84 (Pty) Ltd v Mahdi.* [22] But so, too, is it bound only to follow the ratio decidendi (the reason for the decision) of that court, and not what it might say along the way. The rule in *Thint* might strictly be said not to form part of the reason for the decision – in that it was not necessary to lay down that rule for the decision in that case – but it is quite clear that it was not merely a remark in passing but was intended as an authoritative statement of the law. In the absence of a material distinction between that case and this so far as that rule is concerned I think we would be remiss if we were not to apply it while that decision stands. For that reason I think that the court below was correct in finding that the warrants were invalid and the appeal must fail.

The Bellville Warrant

[34] The Bellville warrant is not open to attack on the same ground because it specified, in some detail, the suspected offences in relation to which it was issued. The attack was directed instead to the scope of the warrant, which was said by the respondents to be 'vague and overbroad'. Other grounds of attack were raised initially but they were not pursued before us.

[35] I observed earlier that whether a warrant is vague, and whether it is over broad, are distinct questions, though they might collectively be described as going to the 'intelligibility' of the warrant. On the first

22 2009 (4) SA 153 (SCA) para 100.

question the enquiry is whether the articles are capable of being identified with reasonable certainty. It is only if that question is answered in the affirmative that the second question arises – does a search for and seizure of those identifiable articles exceed what is permitted by the statute?

[36] The Bellville warrant listed the articles to be searched for and seized in seven paragraphs. I do not think it is necessary to recite them. It is sufficient to say that they include items such as bank statements, invoices, correspondence and so on. I see no difficulty determining what those articles are and I do not think it can be said that the warrant is vague. The real objection is that the warrant is over broad.

[37] In each paragraph, other than paragraph 5, the articles that were sought were expressly limited to documents that relate to the specified offences. Expressed in those terms – as they were also expressed in *Thint* – it seems to me that it cannot be said that the warrant authorises more than is permitted by the Act.

[38] The documents listed in paragraph 5, however, were not expressly stated to be related to the specified offences. The court below was of the view that once that paragraph is read together with annexure C – which lists the offences under investigation – the target of the search becomes apparent. On that basis it held that the warrant, including that paragraph, was valid, and I agree. In the context of the warrant as a whole I do not think that the documents listed in that paragraph could reasonably be read as extending to documents that are not related to the offence. I agree with the court below that the Bellville warrant cannot be faulted and the cross appeal must fail.

[39] The appeal is dismissed with costs that include the costs of two counsel. The cross appeal is dismissed with costs that include the costs of two counsel.

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R W NUGENT
JUDGE OF APPEAL

APPEARANCES:

For appellant:	R F van Rooyen SC A de V la Grange SC
	Instructed by: The State Attorney, Cape Town The State Attorney, Bloemfontein
For respondent:	A Katz SC D Simonsz
	Instructed by: Carl van der Merwe & Ass c/o Cornel Stander Attorneys, Cape Town Webbers Attorneys, Bloemfontein